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1950

File No. Civ. Courts II/50 (N)

Legal Deptt

B BRANCH

Subject:— Notifications under the Bombay Civil Courts Act 1869

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File No. Civil Courts II/50 (N)

30-B

Legal Department.

A revised draft notification in place of the Home Department draft at page 37 is sent herewith.

J.P. Dharendhar,
10/4.

Additional Secretary to Government.

W.L. to L.D., No. 2186, dated the 17th April 1950.

WDP/10.4.

NOTIFICATION

Political and Services Department,

Bombay Castle, 1950.

Bombay Civil Courts Act, 1869.

No. :- In exercise of the powers conferred by section 21, 22A and 23 of the Bombay Civil Courts Act, 1869 (XIV of 1869), and in partial modification of Government Notification, Political and Services Department No. 5293/46-L-III, dated the 14th September 1949, so far as it relates to Civil Court at Ichalkaranji, the Government of Bombay is pleased to direct that with effect on and from the _____ 1950,

(i) there shall be a Civil Court subordinate to the District Court of Kolhapur, at Jaysingpur.

(ii) the said Court shall be presided over by Civil Judge (Junior Division), who shall hold his Court at Jaysingpur;

(iii) the villages of Shirod Taluka in the Kolhapur District specified in the Schedule appended hereto, at present included in the local limits of the ordinary jurisdiction of the Civil Judge (Junior Division) at Ichalkaranji shall be excluded therefrom and be included in the local limits of the ordinary jurisdiction of the Civil Judge (Junior Division) at Jaysingpur.

SCHEDULE.

SRT/18.6.

Legal Department.

In view of the provisions of L.A. Bill No. IV of 1950 (Extending the Limits of Greater Bombay) Home Department requested the District Judge and Sessions Judge, Thana through the High Court to forward a notification altering the limits of the judicial district of Thana and of the Session Division, Thana and altering the Civil Jurisdiction of the Courts of Civil Judges of Senior Division and Junior Division. The District Judge and Session Judge, Thana has supplied the draft accordingly but is of opinion that no fresh notification is necessary to exclude these villages from the jurisdiction of the District and Sessions Court, Thana and from the Jurisdiction of the Civil Courts of Senior Division and Junior Division, Kalyan.

2. The view taken by the District Judge, Thana in his letter at page 21 is correct. Under clause 6 of the L A. Bill No. IV of 1950, Part III has been added to Schedule A to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945. Section 4 of the said Act read with Schedule B provides that the Bombay Civil Courts Act, 1869 and all notifications, or orders thereunder shall cease to apply to, or to be in force in, the areas specified in Parts II and III of Schedule A (Section 4 has been amended by clause 2 of L.A. Bill No. IV of 1950 so as to include Part III therein). Fourteen villages would, therefore, be automatically excluded from the jurisdiction of the District Judge, Thana and from the jurisdiction of the civil Court, Senior Division, Thana and Junior Division, Kalyan.

3. Section 5 of the said Act provides that in all Central Acts "Greater Bombay" shall mean the areas

for the .....

for the time being specified in Schedule A. As Schedule A has been amended by including fourteen villages thereunder, the Court of sessions for Greater Bombay would now include within its jurisdiction fourteen villages referred to above and the Session Judge, Thana would no longer have any jurisdiction over them except for the pending cases.

4. It is not, therefore, necessary to issue any notification under the Code of Criminal Procedure, 1898.

5. It would be observed from the new section 4A proposed to almmbe be inserted in the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 that certain land in the village of Marol which at present forms part of Greater Bombay (Vide item 20 in Part II of Schedule A of the said Act) are to be constituted into a new village to be called the village of Marvali. Since this village is to form part of the Thana District it will have to be specifically included in the Revenue and the Judicial District of Thana and the Sessions Division, Thana. The Home Department should, therefore, in consultation with the Health and Local Government Department and Revenue Department issue the necessary notification under the Bombay Civil Courts Act, 1869 and the Code of Criminal Procedure, 1898 as soon as the Act comes into force.

J.R.Bharucha.
4/4.

Additional Secretary to Government.

U.R. to H.D.No. 4587 ; dated the 4th April 1950.

SHT/18.4.

Legal Department.

A revised draft notification in place of the two N.D. drafts at pages ~~[illegible]~~ 129-130 is sent herewith.

The villages of Malpur Mahal in the Saharanpur Districts were not so far included within the local limits of ordinary jurisdiction of any of the Courts of Civil Judges. ~~[illegible]~~ It is now proposed to include the said villages within the local limits of Civil Judge (J.D.), Sabalpur. It is not, however, necessary to have a separate notification for that purpose. Since the local limits of ordinary jurisdiction of the Civil Judge, (J.D.), Sabalpur, are being extended by the inclusion of villages of Rayad Taluka, the Court of which is being abolished, the villages of Malpur Mahal should also be included therein.

J.R.Dharamdhar.
3/5.

Additional Secretary to Government.

U.R. to N.D. No. 6051, dated the 3rd May 1950.

SNT/18.6.

Legal Department.

The High Court has already stated that Mahwasi areas and Akrani Mahal have not been included within the jurisdiction of any Civil Court till now and that they are being managed by an Agent appointed for these areas. It follows, therefore, that the Bombay Civil Courts Act, 1869, is not in force in these two areas. By the West Khandesh Mahwasi Estates Regulations 1949, all the laws in force in the State of Bombay including the Bombay Civil Courts Act, 1869 have been declared to be in force in the villages of Mahwasi Chiefs only. The Akrani Mahal, even though it is apart of partially excluded areas, is distinct from the area of Mahwasi Estates. The said Regulation does not extend to the Akrani Mahal, The Bombay Civil Courts Act, 1869, is not therefore in force in the Akrani Mahals. Unless therefore the Bombay Civil Courts Act, 1869, is applied to the Akrani Mahal it is not legally possible to include the same within the local limits of the court of the Civil Judge (Junior Division) which is proposed to be established at Taloda under the Bombay Civil Courts Act, 1869. The reference to the Akrani Mahal has therefore been deleted from the Home Department draft and a revised draft in respect of remaining areas in sent herewith.

2. Whether it is desirable to establish a Court for a smaller area that is the areas comprising the villages of Mahwasi Chiefs and 133 villages out of Taloda Taluka is for the Home Department to decide.

3. If it is decided to include Akrani Mahal within the ordinary civil jurisdiction of the Civil Judge (Junior Division) Taloda, it will be necessary to make a Regulation on the lines of the West Khandesh Mahwasi Estates Regulations 1949 in respect of Akrani Mahal under sub-paragraph (2) of paragraph 5 of the Fifth Schedule to the Constitution of India. The Akrani Mahal has been included among the scheduled areas within the State of Bombay under the Scheduled Areas (Part A States) Order, 1950, issued by the President under paragraph 6 of the

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of the Fifth Schedule to the Constitution of India. In the meantime, H.D. should verify under what authority the Agent exercises his jurisdiction over the areas proposed to be included in Akrani Mahal as such jurisdiction will have to be cancelled under the Regulations proposed to be made. Unless such Regulations is made, and the Bombay Civil Courts Act is extended to the Mahal it will not be legally feasible to include in the proposed notification the area specified in Schedule C. A pargna Bhadli falls within the jurisdiction of the Civil Judge, Junior Division, Taloda.

J.B. Thuramdhar.
9/5.

Additional Secretary to Government,

R. to H.D., No. 4377, dated the 19th May 1950.

SMT/18.6.

Legal Department.

The revised draft notification are sent herewith.

2. Since the villages of Khed and Ambegaon Talukas are to e divided between two courts it is betterp in order to give clear idea, to specify the villages by names under each court. It will also be convenient to amend the notification if ddn future certain of such villages are excluded from the jurisdiction of the present court and included in some other court. Home Department should accordingly fill in the blanks incolumn 2 against items 6 and 7.

3. The village of Malegaon Budruk, presumbly of Baramati Taluka, has been excluded in the Home Department draft from the jurisdiction of the Court of Civil Judge (Junior Division) Baramati. The same however, however has not been shown to be falling within the jurisdiction of any other court. The Home Department should ascertain under which court it is to be shown and should include it under appropriate that court in column 2.

Sd/- J.P.Dharandhar.
26/5.

Additional Secretary to Government.

U.R. to H.D. No. 7212, dated the 27th May 1950.

SMT/29.6.

Legal Department.

Revised draft notification in place of the H.D. drafts are sent herewith.

2. As the High Court desires that the notifications should issue without any delay, they may be issued by Government But Home Department should ascertain, after the issue of the notification, the position as regards the Subordinate Court (Junior Division), Radhanpur, which does not appear to have been abolished and has not been includes in the draft now sent to the Legal Department which specifies the Court subordinate to the District Court of Mahsana. Under H.D. Notification No. 5518/5-(IV), dated the 22nd September 1948, the Court of the Civil Judge (Junior Division), Radhanpur, was established and made subordinate to the Disttict Court at Banaskantha and the Local limits of ordinary jurisdiction ofthat Court had been specified therein. This area was defined in terms of the following area :-

(i) The Radhanpur State, and

(ii) Thana of Varahi and Santhalpur each consisting of the areas mentioned in Schedule I against them in Notification No.2753/46-F, dated 8th June 1948 inthe P. & S.D. By the notification issued by P & S.D. under its No. 2755/46, dated the 29th July 1949, Part III, the constituted Banaskantha District has been completely reconstituted by including therein the following talukas :-

"(1) Palanpur Sub-Division.	(1) Palanpur Taluka (2) Deesa Taluka. (3) Dhanera Taluka. (4) Wadgam Mahal. (5) Danta Taluka.
(2) Tharad Sub-Division.	(1) Tharad Taluka. (2) Vav Taluka. (3) Deodar Taluka. (4) Kankrej Taluka."

(Please see Schedule V-I ofthat Notification).

It will thus appear that the areas within the local

limits.....

limits of ordinary jurisdiction of the Court of Civil Judge, Radhanpur, have been freshly distributed between the various talukas shown above, (Please see particularly Schedule V-A). There is no information in this Department, as to on that date the Court of Civil Judge, Radhanpur, was abolished and the area under the jurisdiction was distributed between other courts. H.D. should therefore ascertain the full facts about the Court of Civil Judge (Junior Division), Radhanpur, and should consider whether any further modification of the existing notifications is necessary.

Sd/- J.R.Dhurandhar.
17/5.

Additional Secretary to Government.

U.R. to H.D. No. 6744, dated the 17th May 1950.

SRT/19.6.

Legal Department.

The view taken by Secretary, H.D. that under the Constitution of India, the Bombay Civil Courts Act, 1869, automatically applies to the Akrani Mahal is not correct.

2. The provisions of the Constitution of India were taken into consideration and in fact have been referred to in L.D. Opinion No.6377, dated the 10th May 1950 at pp.71-72 ante.

3. Under the Scheduled Areas (Part A States) Order, 1950, issued by the President under paragraph 6 of the Fifth Schedule to the Constitution of India, Akrani Mahal has been declared to be a Scheduled Area within the State of Bombay. Article 246(3) of the Constitution of India provides that the Legislature of any States specified in Part A of the First Schedule has exclusive power to make laws for such State or any part thereof with respect of any of the matters enumerated in List II in the Seventh Schedule. Para 5 of the Fifth Schedule to the Constitution of India then provides that notwithstanding anything in this Constitution, the Governor ..... may, by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled area or any part thereof in the State. The Bombay Civil Courts Act is is not an Act of the Legislature of the State. Sub-paragraph (3) of the said para 5. makes a distinction between the Act of the Legislature of the State and the existing law. Sub-paragraph (1) of the said para 5 would not thereof apply to it. As the Bombay Civil Courts Act was not in force in the Akrani Mahal before the 26th January 1950.

the only feasible course is to make a regulation in virtue of the sub-paragraph (2) of para 5 of the Fifth Schedule to the Constitution of India as advised in L.D.U.R. No, 6377 dated 10-5-1950.

After the orders of Government for making the Regulations have been obtained the draft of the Regulation will have to be settled inconsultation with the Legal Department. The draft Regulation before submission to H.E. the Governor should bbe printed. The Press may be asked to show the proof to this Department before the copies are printed. At this Stage, it would be sufficient to have about 20 copies printed on white paper and 4 copies printed mubkm on blue paper. One of the blue copies of the draft Regulation may be submitted to H.E. for his signature, with the endorsement at the end as follows, namely :-

" I have made this Regulation under sub-paragraph (2) of paragraph 5 of the Fifth Schedule to the Constitution of India.

Poona,
Bombay. 1950

Governor of Bombay."

The authentic copy signed by H.E. may be sent to the Government of India, with five spare (white) copies, for obtaining the assent of the President. After the assent is received the Regulation may be published in Part IV mmxxxxxxxx of the Bombay Government Gazette and he translations of the same in Marathi, Gujarati, Kanada and Hindi (in Devnagari and Urdu scripts) may also be published in the relevant parts of the Gazette.

Sd/- J.N.Dhurandhar,
1/6.

Additional Secretary to Government.

U.R. to H.D. No. 7409, dated the 1st June 1950.

SHT/19.6.

Legal Department.

A revised draft notification is sent herewith subject to the following observations :-

It is provided in section 23 of the Act itself that a Joint Civil Judge appointed to assist in the Court of another Civil Judge shall dispose of such civil business within the limits of his pecuniary jurisdiction as may, subject to the control of the District Judge, be referred to him by the Judge of such court. If it is intended that the Joint Civil Judge (Junior Division) should dispose of cases arising from the talukas of Sanand the necessary instructions to that effect may be given by the District Judge, West Ahmedabad, to the Principal Civil Judge at Ahmedabad who will then refer only such cases to a Joint Judge.

Sd/- J.R.Dharmadhar.
24/10.

Additional Secretary to Government.

H.E. to H.D., No. 14784, dated the 25th October 1950.

SMT/19.6.

NOTIFICATION.

Home Department,

Bombay Castle, dated 1950.

Bombay Civil Courts Act, 1869. (No.XIV of 1869).

In exercise of the powers conferred by section 23 of the Bombay Civil Courts Act, 1869 (No.XIV of 1869), the Government of Bombay is pleased to direct that the Joint Civil Judge, Nandurbar, appointed under Government Notification in the Home Department, No. 2031/5-II, dated the 12th June 1947, shall hold his Court at Shahada for the disposal of work referred to him by the Civil Judge at Nandurbar.

By order of the Governor of Bombay

Secretary to Government.

SMT/19.6.